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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 8, 1997

Via Hand Delivery

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

***Re: Reply Comments of Horizon Personal Communications, Inc.
WT Docket No. 97-82, DA 97-679***

Dear Mr. Caton:

Horizon Personal Communications, Inc. ("Horizon") is submitting its reply to the various comments filed in response to the FCC's June 2, 1997 *Public Notice* seeking comment on the restructuring of C- and F-Block installment payment requirements. While the comments reflect a division among the industry on these very difficult issues, those commenters with the greatest expertise and the least self interest have provided compelling evidence that the C-Block¹ installment plan should be significantly modified. The FCC's June 30, 1997 public forum provided further evidence that such modifications are necessary. In addition, all of the financial experts that participated in the second panel made it clear that such rule changes must be adopted immediately if the C-Block is to succeed.

The C-Block Rules Must Be Changed

The comments filed in response to the June 2nd *Public Notice*, and the panel made up of industry members, both reflected a sharp difference of opinion among the wireless industry as to whether, and how, the C-Block rules should be modified. For the most part, C-Block licensees argued that such modifications were necessary because these licensees face financial failure due to fundamentally changed circumstances in the marketplace that were both unforeseeable and beyond their control. On the other

¹ Although Horizon is not an F-Block licensee, it believes that the same treatment should be accorded to these entities.

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hand, competing wireless providers (including certain A/B-Block licensees, Nextel, and numerous D/E/F-Block licensees) argue that there has been no significant change in circumstances, and that the C-Block problems are largely of their own making. Similarly, the AirGate panelist argued that, "the sky is not falling," and that C-Block licensees that overbid should be held accountable for their voluntary actions. Horizon did not overbid for its C-Block licenses, and is prepared to honor its current obligations. Therefore, one would expect Horizon to support AirGate's viewpoint, but this is not the case. Horizon believes that the C-Block licensees current predicament is largely due to unforeseeable changed circumstances beyond their control; and from a pragmatic point of view, the public interest will be better served if rule changes are made that will give all C-Block licensees the opportunity to succeed in the marketplace.

While these opposing viewpoints would normally make it difficult for the Commission to sort through the evidence and determine the best course, the financial community has made this task much easier. All of the comments submitted by lenders and other financial experts, and the financial community panelists invited by the Commission to speak, made it clear that, in fact, there has been an unforeseeable "meltdown" of the C-Block capital markets, which has artificially interfered with the ability of licensees to proceed with their buildout and meet their license payment obligations. Representatives from Bear Stearns, Lehman Brothers, Toronto Capital, BIA and the Yankee Group, all agreed that rule changes were imperative, if the C-Block is to survive; and that accommodating the current C-Block licensees will be a far more preferable way to bring meaningful competition to the marketplace than subjecting the industry to numerous bankruptcies, license defaults, and the delay and uncertainty created by reauctions. Contrary to the assertions of AirGate and others, the Bear Stearns panelist made it clear that the C-Block bidding was not unreasonable at the time of the auction and that while the prices were high, there wasn't cause for alarm. These representatives of the financial community should be viewed by the Commission as experts on the very issues that currently divide the industry. Their viewpoints should be given the greatest amount of weight because of this expertise, and because they were the most objective commenters.

The FCC should also take note of the fact that despite the vocal objections of a few, the vast majority of C-Block licensees that are in a position to meet their current obligations support rule changes that will help all C-Block licensees compete in the marketplace. C-Block licensees, such as Horizon, Meretel Communications, LP, and the Small Business Coalition (made up of ten C-Block licensees who are prepared to meet their installment obligations) all support the proposed rule changes that will restructure the C-Block debt. These entities realize that, while their business plans may still be intact, they will suffer in the long run if their C-Block "neighbors" are in default. Without a strong C-Block, none of these licensees will be able to forge the intercarrier arrangements for seamless nationwide coverage that will be necessary to truly compete with cellular and other PCS incumbents.

The Commission should also take note that the National Association of Black-Owned Broadcasters ("NABOB") supports the proposed restructuring. This organization represents the interests of African-American owned communications businesses throughout the United States. While the Adarand decision threw a last-minute wrench into the C-Block rules and contributed to the skewed auction results, Congress, nonetheless, clearly announced their intent for the Commission to facilitate the participation of minority- and women-owned businesses in PCS. NABOB's position reflects that several minority-owned businesses succeeded in the auction, despite the loss of advantages due to Adarand, and that restructuring the C-Block is necessary to ensure the ability of these businesses to compete. Facilitating the continued participation of these successful minority bidders is far preferable to ruining these licensees, and requiring other businesses, very likely with much less diversity, to start at square one through a reauction, where the ever-growing head start of other PCS providers will doom them to failure.

The Commission should also take cognizance of the comments of Larry Day of Cellexis, during the June 30 panel discussion. Mr. Day pointed out that cellular carriers and large PCS incumbents have historically shown little or no interest in facilitating true wholesaling of their services. Therefore, the C-Block represents the only realistic opportunity for resellers to participate in the wireless industry. The significance of reseller participation should not be overlooked. In the long distance industry, the ability of resellers to obtain true wholesale rates has allowed them to act as a competitive spur in what would otherwise be an oligopoly. The result has been a noticeable drop in prices for the consumer. PCS resellers could bring the same benefits to wireless. These sentiments are also expressed in the comments filed by the National Wireless Resellers Association.

But perhaps the most compelling reason for the Commission to restructure the C-Block installment payment rules is to facilitate rapid service to rural and non-metropolitan areas. Horizon was disappointed that this point was never fully aired during the panel discussion. Every MTA contains a city (or cities) of substantial population. Therefore, the A/B-Block licensees are in a position to meet their buildout requirements by serving little more than the major metropolitan area(s) within their MTA, leaving smaller communities and rural areas unserved. In contrast, many BTAs have no significant population centers. C-Block licensees serving these BTAs will have to extend coverage to non-metropolitan areas in order to meet their buildout requirement. Since D/E/F-Block players have less bandwidth and less stringent buildout requirements, saving the C-Block is the only way to assure that these areas are served. The panelist from AirGate argued that the failure of C-Block licensees would not affect the level of competition in the wireless marketplace, since the C-Block represents only one of five or six providers. However, this statement completely misses the mark when it comes to rural areas, where C-Block players are likely to be the only provider of state-of-the-art digital services and, in some locations, the only wireless provider at all.

From the comments discussed above, it should be clear to the Commission that restructuring the C-Block rules is imperative for reasons that reach beyond self-interest of a few licensees. Those commenters who oppose the rule modifications appear to have ulterior motives, including anti-competitive ones. On the one hand are several commenters which were unsuccessful in the C-Block auction and want to obtain C-Block licenses at a fraction of their original bid price, in a reauction. Horizon would benefit from the increased opportunities of a reauction, as well, but agrees with the financial community experts that a reauction would engender unacceptable delay, and contribute to the failure of the C-Block as a whole.²

On the other hand, opponents, such as Sprint, Nextel and BellSouth, have an anti-competitive incentive to fight any proposed restructuring, since failure of the C-Block will remove an important source of competition from the marketplace. The vehemence of their arguments can be viewed as an indication that C-Block licensees are poised to bring significant competition, especially in second-tier markets. The only C-Block licensees that appear to oppose rule modifications are those such as Cook Inlet Region, Inc. and the other "Joint Commenters," which have already formed strategic alliances with A/B-Block licensees based on their chosen technology, and, therefore, need not rely on other C-Block licensees for seamless coverage, joint marketing, and other vital business concerns. D/E/F-Block licensees opposing the restructuring proposals fall somewhere in between: A number of them, such as Northcoast Communications LLC, view the C-Block as a source of potential competition, and a threat to the value of their license; while others withdrew from the C-Block auction and want a second chance at these licenses. Horizon believes that the concerns of Northcoast and others that their D/E/F-Block licenses will lose value is misplaced. The D/E/F-Block auction prices have been viewed by the industry as "bargain rate," even in relation to the A/B-Block auction. There is little room for the value of the D/E/F-Block licenses to drop, so this should not be a concern. These licensees will benefit, in the long run, by a healthy C-Block, since the marketplace will likely view PCS as a whole to be more stable. And the C-Block players make more likely allies for the D/E/F-Block players seeking intercarrier arrangements.

Some of the objecting commenters argue that the Commission should not engage in any "bail-out" of C-Block licensees. Horizon wishes to stress that its proposed rule modifications, discussed below, do not constitute a "bail-out." Instead, every option that would result in a change of the installment financing terms should require the licensee to agree to an accelerated buildout schedule. Thus, the Commission, and the public, would gain a valuable benefit over and above what was originally required of these licensees.

² As discussed below, Horizon has proposed a limited "amnesty" program that would make some licenses available for immediate reauction, in a manner that does not threaten the stability of the C-Block.

A Menu of Restructuring Options is the Best Approach

Because licensees face a broad range of circumstances, financial and otherwise, Horizon believes that a menu of restructuring options is the best approach to the C-Block problem. An overwhelming number of the commenters who support restructuring (including members of the financial community) agree with this proposal. Quite simply, a “one-size-fits-all” approach would not be effective. Some licensees have enough capital available that they could take advantage of a rule modification allowing them to pay a discounted lump sum for their licenses, and this development would place them on firm financial footing and enable them to attract additional capital for buildout and operation of their systems. Others will need every available dollar of capital for buildout, and simply cannot afford to take advantage of a prepayment option. These entities would benefit from a deferral of all interest payments, as suggested in the MCI proposal. Yet other licensees may be able to meet their payment schedule and commence buildout if they can jettison a handful of licenses that ruin an otherwise sound business plan, due to the unforeseen changed circumstances. Others may wish to keep their current license payment obligations undisturbed. The Bureau should allow all of these options, because there is no single rule change that will resolve the financing problems for any substantial portion of C-Block licensees. Instead, it is imperative that licensees be given the flexibility to fashion their own remedy based on their unique needs. A large number of commenters support this approach, including: PCS Plus, LLC; Brookings Municipal Utilities; Alpine PCS, Inc.; Meretel Communications, LP; Indus, Inc.; R&S PCS, Inc.; SouthEast Telephone, Ltd.; Bear Stearns & Co., Inc.; Toronto Dominion Bank and Toronto Dominion Securities; ClearComm, LP (formerly PCS2000); Holland Wireless, LLC; Wireless 2000, Inc.; Northern Michigan PCS Consortium, LLC; PCSouth, Inc.; Communications Venture PCS LP; and BIA Capital Corp. While there are minor differences in the menu options advocated by these entities, there is a great deal of overlap. A “menu” approach addresses the concerns of nearly all of the commenters in this proceeding. Those that have capital but whose business case has been harmed by changed circumstances will benefit from the discounted prepayment option. Those with little or no capital will benefit from the modification of payment terms. Those who wish to see licenses available for reauction will benefit from the amnesty program. And those who prefer the *status quo* will be free to retain their current installment payment plans. These options are discussed more fully below.

1. Discounted Prepayment Option

Horizon agreed in its comments with the proposal of General Wireless, that the Commission should reduce the indebtedness of C-Block licensees by lowering their high bid prices to be on a par with A/B-Block high bid levels. A number of commenters agreed with this approach, including Brookings Municipal Utilities; Meretel Communications, LP; R&S PCS, Inc.; SouthEast Telephone, LP; PCS Plus, LLC / MTG, Inc.; Bear Stearns & Co., Inc.; Toronto Dominion Bank and Toronto Dominion Securities; and ClearComm, LP. In addition to these written comments,

participants in the June 30, 1997 public forum (including Lehman Brothers and Toronto Dominion) both identified the discounted pre-payment option as a desirable way for the Commission alleviate the financial dilemma facing C-Block licensees, and, at the same time, take the FCC and federal government out of the position of being a creditor/debt collection agency. The benefits of a discounted pre-payment option are clear. The government will immediately collect revenue for the benefit of taxpayers; licensees will be able to revamp their business plans and gain the ability to attract capital for construction and operation of their PCS systems; the Commission will avoid being dragged through a never-ending succession of default and bankruptcy proceedings; and, most importantly, service to the public will not be delayed.

In order for discounted pre-payment to be a viable option, experts from the financial community universally agreed that the discount offered must be substantial. For example, Toronto Capital indicated that the Commission would have to reduce the principal owed by a factor of 80 percent; BIA similarly indicated that a discount of at least 75 percent was necessary; and Lehman Brothers advocated a reduction of C-Block debt to a level below \$10 per POP. While these amounts are significant, they are consistent with the suggestions of General Wireless, Horizon and others, to place the C-Block prices on a par with the A/B-Block winning bids.

Several parties argue that it is unfair to retroactively reduce the high bid amounts, because they may have dropped out of the C-Block auction at a bid level higher than the discounted amount. Thus, the logic goes, they would have won the auction if such a discount had been applied upfront. This sentiment is expressed by Point Enterprises, Inc.; Conestoga Wireless Company; and the AirGate commenters. However, these parties ignore the changed circumstances which created the current C-Block problem. These changed circumstances were universally acknowledged by the financial experts present at the June 30th public forum as a direct and unforeseeable cause of the C-Block's ability to obtain financing. Horizon and the other C-Block winners placed their high bids in good faith, and had every intention of fulfilling their obligations, as evidenced by their timely down payment. If the detractors of this proposed option had been high bidders themselves, based on their final bids prior to withdrawal from the auction, they too would be asking the Commission for relief. The current high bidders demonstrated that they value the spectrum the most, at a time when nobody was counting on a later discount. The proposed rule changes are necessary only because of the changed circumstances discussed above. More importantly, the public interest is served by accommodating the current high bidders, since it is clear from the comments and panelists that the public interest is best served by avoiding the delay of a reauction.

BellSouth has submitted comments arguing that the Commission does not possess the authority to compromise debts of more than \$100,000 owed to the government, and therefore, it cannot adjust the C-Block high bid prices. It is our understanding that, even if the C-Block bid amounts are properly considered "claims" under the law cited by BellSouth, the FCC is not absolutely barred from adjusting the payment terms. Instead, the Commission can do so with the consent of either the Attorney General, or the Director

of the Office of Management and Budget. If the approval of these officials is needed, Horizon strongly recommends that the Commission promptly obtain such approval. However, it is not clear to Horizon that the statute quoted by BellSouth applies where a bid is not being unilaterally “compromised” by the Commission. Instead the Commission is negotiating a modification of license terms by requiring licensees to devote their resources to an accelerated buildout schedule, which achieves one of the most important governmental objectives. It is also not clear that a bid amount in this context should be considered a “claim,” where the FCC’s own rules and actions contributed to the amount of the bids, and the current difficulties in financing C-Block operations. The Commission’s rule changes in the wake of the Adarand decision, which made bid credits meaningless, coupled with last-minute changes to the D/E/F-Block rules, played a significant role in inflating C-Block bids, and depressing D/E/F-Block prices, thereby undercutting the value of C-Block spectrum. The Commission must recognize that the C-Block winners did not purchase tangible goods of a known market value. Instead, they were participants in an experimental licensing process that resulted in prices which exceeded even the Commission’s wildest expectations.

Therefore, a discounted pre-payment option is a sound method of alleviating circumstances that were unforeseeable and beyond the control of C-Block high bidders. In calculating this discount, the Commission should use a formula which will make the pre-payment option available on an even-handed basis. To do so, the Commission should follow the recommendation of Horizon and General Wireless, Inc., to establish a “discount factor” that would apply to all C-Block licenses and licensees. This discount factor can be calculated based on the difference between the nationwide per-POP average of the A/B-Block auction, and that of the C-Block auction, as described in the General Wireless comments at pages 7-13. This factor could then be multiplied against each C-Block BTA price to establish the discount level for each license. Horizon opposes any suggestion that the discount be created by applying the national average A/B-Block price to all licenses, or any other formulation which would lead to a greater rate of discount for some licensees than for others. Such approach would disproportionately reward those who paid the most.

2. Modification of Payment Terms

Many commenters, including Horizon, supported MCI’s proposal to modify the license payment terms, by deferring interest payments for at least five years. It is significant that the financial community strongly supported this option, in their written comments and statements during the June 30 public forum. Horizon suggested, at page 13 of its comments, a refinement of this proposal, which would defer payment of principal until year ten. At least one commenter, Chase Telecommunications, Inc., supports this proposal.

Horizon notes that the Commission is empowered, under Paragraph 239 of the Competitive Bidding Second Report and Order, to establish the interest to be charged on installment payments “at a rate no higher than the government’s cost of money.” (emphasis added). Thus, the FCC is free to charge any interest rate (including zero percent interest) which is at or below the cost of money.

3. Amnesty Program

Horizon suggested that the Commission implement an “amnesty program,” among its range of options, that would allow C-Block licensees to return licenses for immediate reauction, without default or cross-default penalties. Few commenters directly addressed this concept. Indeed, the only commenter with a similar proposal in their initial comments appears to be R&S PCS, Inc. However, during the panel discussion, it became clear that nearly everyone supports this proposal, even those parties such as Cook Inlet and AirGate, who otherwise oppose a restructuring of C-Block payment obligations. The only aspect of this proposal upon which parties seem to differ is the terms governing such amnesty. Cook Inlet and AirGate advocate that licensees taking advantage of this option be required to turn in all of their licenses, and that these entities be prohibited from participating in any reauction. In addition, AirGate advocates that these licensees be required to forfeit any money already paid to the Commission. Horizon is concerned that these restrictions are too severe, and will discourage auction winners from placing into recirculation licenses which they are unable to construct, due to the changed circumstances. Therefore, Horizon stands by its more moderate proposal to allow licensees to choose which markets which would be turned in for reauction. Licensees using this option would be unable to bid in a reauction on any license they return to the Commission, and would be unable to participate at all in a reauction if they turn in more than five of their licenses. This approach is more likely to encourage licensees to jettison those licenses which they are unable to promptly construct. This will allow existing licensees to improve their ability to implement service to those license areas which they retain, while quickly making spectrum available for reauction to entities such as AirGate, and others, who were unsuccessful in the initial C-Block auction.

Given the widespread support for an amnesty program, the Commission should adopt Horizon’s proposal. By establishing a deadline for turning in licenses, the Commission will create a pool of licenses for prompt reauction in a truly competitive bidding process, rather than enduring the process of single licenses becoming available at different times, far in the future, through the default and bankruptcy process. While amnesty will help to improve the financing situation for certain bidders, it should not be the only option available. Amnesty will be a bitter pill for many auction winners to swallow, because it means they must abandon, at least in part, their hopes as an entrepreneur. This is a powerful disincentive to participation in the amnesty program, especially for smaller licensees who have only one or two licenses. In addition, the amnesty option will require a reauction of returned licenses, which will engender more

delay in the commencement of service to the public than some of the other restructuring options discussed above.

4. Allow Payments According to Existing Arrangements

Horizon advocated a fourth option, to allow C-Block licensees to continue paying for their licenses according to the terms of their current obligations. Horizon continues to believe that this option should exist, since it will allow those licensees who are able to obtain financing to implement their PCS system without an expedited buildout requirement. In contrast, Horizon believes that those licensees who take advantage of the pre-payment option should agree to an accelerated buildout schedule as the *quid pro quo* for this benefit. Retaining this option will provide an incentive for licensees to restructure their payment obligations only as necessary. In addition, the public interest would benefit from requiring an accelerated buildout schedule, which may be seen as the public's "benefit of the bargain" in adjusting the payment terms between the Commission and C-Block licensees.

5. Subordination of Government Security Interest

Several commenters, especially members of the financial community, indicate that it is vital for the Commission to subordinate the government's priority lien position to commercial lenders, to some degree, so that these lenders will be more willing to make capital available to C-Block lenders. Horizon supports this idea as a supplement to its suggested menu of refinancing options. Once the flow of credit into the C-Block resumes, many of the problems plaguing these licensees may simply vanish. Horizon itself has experienced difficulty in obtaining favorable financing terms due, primarily, to the government's priority position over other creditors -- even though Horizon has a sound business plan, an established relationship with its lender, and a strong track record as a provider of telecommunications services. While Horizon was ultimately able to obtain financing, the terms of such financing would, no doubt, improve substantially if its lender's security interest was not subordinate to the government.

The C-Block Interest Rate Must Be Adjusted

Nearly all of the commenters addressing the subject agree that the interest rate on C-Block licenses should be reduced from the coupon rate of 7.00 percent to the government's actual cost of money, which was 6.535 percent for September 17, 1996, grantees. The only opponents to this proposal are Sprint PCS, Pinnacle Telecom, Pioneer Telephone Association and NextWave, which advocate that the current rates, and methodology used to calculate these rates, be retained. None of these commenters provides support for its position, and none argues that the Commission correctly calculated the 7.00 percent interest rate it imposed on September 17, 1996 grantees. Therefore, the Commission should defer to the unbiased and expert opinion of the panelist

from Lehman Brothers, who indicated unequivocally that the Commission's use of the coupon rate was incorrect, consistent with Horizon's comments.

The Commission Should Promptly Refund All March 31 Installment Payments

Every commenter addressing the issue agreed with Horizon that the Commission should promptly refund all installment payments made on or before the March 31, 1997 payment deadline, including members of the financial community. In addition, several commenters (including Comscape, the Small Business Coalition, the National Telephone Cooperative Association, and DiGiPH PCS, Inc.) agreed with Horizon that these payments should be refunded with interest, in order to place all licensees on an even footing. The panelist from Lehman Brothers also supported this conclusion. In order to ensure fairness, licensees who timely paid their installment obligations should immediately receive a refund, with interest, so that this money may be applied to the construction and operation of their PCS system(s).

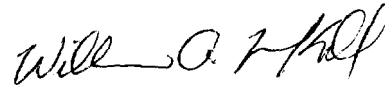
The Commission Should Permit Parties in Partitioning Arrangements to Set Their Own Price for Ongoing Installment Obligations

As Horizon indicated at page 5 of its initial comments, all parties to a partitioning and/or disaggregation of one-third or less of the MHz-POPs of a BTA to participate in the installment plan based on a negotiated arrangement, rather than a *pro-rata* share of the existing debt. This proposal is supported by the Rural Telephone Finance Cooperative, which is a privately funded, member-owned organization with expertise in financing wireless and rural telephone systems. The RTFC agrees with Horizon that the current requirement to pro-rate the license debt discourages rural telephone companies and others from entering into partitioning and disaggregation arrangements for rural and non-metropolitan areas. Under the current rules, entities wishing to partition rural areas, and obtain government financing, must pay the same per-POP price as the original licensee. This licensee formulated its bid based largely upon the economics of building out the densely populated portions of the BTA. To saddle the rural partitionee/disaggragatee with the same per-POP price discourages rapid service to rural areas, in conflict with Section 309(j) of the Communications Act, and the FCC's commitment to universal service.

Conclusion

As shown above, the Commission should change its C- and F-Block installment payment rules to prevent ruinous defaults for small businesses, and delays in the provision of advanced wireless services to less populated areas.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. McKell", written in a cursive style.

William A. McKell
President